SUPREME COURT OF THE UNITED STATES.

No. 133.

REUBEN MIDDLETON, PL'FF IN ERROR,

vs.

WILLIAM McGREW.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF TEXAS.

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GIDEON, Print.

Caption.

THE UNITED STATES OF AMERICA,
Eastern District of Texas.

At a term of the district court of the United States for the district of Texas, begun and held at the city of Galveston, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-seven—present, the honorable John C. Watrous, judge of said court, Ben. McCulloch, United States marshal, Samuel D. Hay, United States attorney, and James Love, clerk—among other were the following proceedings, to wit:

REUBEN MIDDLETON
v.
WILLIAM MCGREW. } 444.—Trespass to try Title.

Be it remembered that heretofore, to wit, in the year of our Lord one thousand eight hundred and fifty-three, came Reuben Middleton, by Robert Hughes, his attorney, and filed his petition herein, which is in the words and of the tenor following—that is to say:

Petition.

THE UNITED STATES OF AMERICA,
District of Texas, to wit.

District Court, January term, 1857.

To the honorable John C. Watrous, judge of the district court of the United States for the district of Texas, sitting in Galveston.

The petition of Reuben Middleton, a citizen and resident of the State of Mississippi, plaintiff, against William McGrew, a citizen of the State of Texas, resident in the county of Refugio, defendant, and thereupon your petitioner represents and complains that heretofore, to wit, on the first day of October, A. D. 1853, at, to wit, in the district aforesaid, he was seized in his demesne as of fee, of, in and to a certain tract or parcel of land situate, lying and being in the county of Refugio aforesaid, in the southern and western margins of the San Antonio and Guadalupe rivers, being the same land which was granted to a certain Joshua Davis, by the proper authorities of the State of Coahuila and Texas, in the colony of Power and Hewetson, and bounded as follows, to wit: on the north by the rivers San Antonio and Guadalupe, on the south by vacant lands, on the east by the league of land granted to P. Hines, and on the west by the league granted to Doña Josefa Galan, widow of ——— Hernandez, deceased, having a front, when reduced to a straight line, on said river, of about eight thousand eight hundred and eighty-seven varas, and running back about fourteen thousand and sixty varas, and containing five and one-fourth leagues,

be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and being so then and there possessed of the same, the said William McGrew, on the day and year last aforesaid, and at the district aforesaid, with force and arms, then and there entered upon and took possession of the said tract or parcel of land, with the hereditaments and appurtenances aforesaid, and then and there ejected, expelled, put out, and removed your petitioner from the same, and continued him so ejected, expelled, put out, and removed, for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great injury of your petitioner, wherefore he says he has sustained damage to the value of five thousand dollars, and therefore he brings this his suit, &c.

The premises considered, your petitioner prays your honor to grant unto him the United States process of citation, directed to the marshal of the district aforesaid, commanding him to summon the said William McGrew to be and appear in this honorable court at the next term thereof, to be held in the court-room in the city of Galveston, on the first Monday in January next, then and there to answer this petition, and that after due trial, according to the forms of law, judgment may be rendered in favor of your petitioner for the recovery of the tract or parcel of land, with the hereditaments and appurtenances aforesaid, with the damages aforesaid, and costs in this behalf expended, and that he may have execution of the said judgment, or that he may have such other relief, order, or judgment as the nature of the case may require; and, as in duty bound, he will ever pray, &c.

ROB. HUGHES,
For Plaintiff.

Memo.—This action is brought as well to try title as to recover damages.

ROB. HUGHES,
For Plaintiff.

Nov., A. D. 1853.

And afterwards, to wit, on the fifth day of January, in the year of our Lord one thousand eight hundred and fifty-four, came the defendant, William McGrew, by his attorneys, and filed the following demurrer and answer to the plaintiff's petition—that is to say:

Demurrer and Answer.

In the District Court of the United States, District of Texas.

REUBEN MIDDLETON } v. WILLIAM MCGREW. } 444.

And now comes the defendant, William McGrew, by his attorneys, and defends the wrong and injury, when, &c., and says that plaintiff's

petition, and the matters and things therein contained, as the same, are not sufficient in law, and that this defendant is not bound to answer the same. Wherefore this defendant demurs and excepts to said petition, and prays the judgment of the court, &c.

WILLIAM S. GLASS,
JONES & BALLINGER,
Attorneys for Defendant.

And for further answer in this behalf, should the above demurrer be overruled, the said defendant further defends the force and injury, when, &c., and says, that he is not guilty of the supposed trespass and ejectment in plaintiff's petition charged, in manner and form as the said plaintiff hath therein charged against him, and of this the said defendant puts himself on the country, &c.

W. S. GLASS and
JONES & BALLINGER,
Atty's for Defendants.

And afterwards, to wit, on the nineteenth day of February, of the same year, the court here made an order in this cause, which is in the words and of the tenor following—that is to say:

Order of Court.

REUBEN MIDDLETON
v. } 444.
WILLIAM MCGREW.

By consent of parties, it is ordered that defendants have leave to file pleas of the statute of limitations, and this cause is continued to the next term of this court.

And afterwards, to wit, on the twenty-first day of January, in the year of our Lord one thousand eight hundred and fifty-seven, the parties by their attorneys filed an agreement herein, which is in the words and figures following—that is to say:

Agreement of Counsel.

In U. S. District Court, Galveston—January term, 1856.

REUBEN MIDDLETON
v.
WM. MCGREW and others.

It is hereby agreed in the Middleton cases, in which we are counsel, numbered from 444 to 456 inclusive, on the docket of said court, that the testimony taken in any one case may be used in all the others, so far as pertinent or applicable to the facts. Further agreed, that all defences may be given in evidence under the general issue, except the defences under the statute of limitations, to which defences may be

interposed at any time by pleas, giving reasonable notice by filing the said plea or pleas one day at least before the trial.

ROB. HUGHES,
For Pl'ff.

January 18, 1855.

And afterwards, to wit, on the same day and year, came the defendant by attorney, and filed his amended answer herein, which is in the words and figures following, to wit:

Amended Answer.

In U. S. District Court, Galveston.

MIDDLETON
v. } 444.
McGREW.

The defendant, by leave of the court, amends his answer herein, and for further plea and answer in this behalf says, that the plaintiff ought not to have and maintain his action herein, because, he says that the said Joshua Davis, in the petition named, under whom the plaintiff claimed, died in the year 1855. That his next of kin and pretended heirs, under whom the plaintiff claims, were, at the date of his death, aliens to the republic of Mexico, being citizens of the United States of America, residing in the State of Missouri, and thenceforward continued and remained aliens as aforesaid, and aliens from the republic of Texas, being citizens of the United States, resident in the State of Missouri as aforesaid. And that the said next of kin and pretended heirs did not at any time prior to the annexation of Texas, or ever after, take possession of the land sued for, and did not, prior to said annexation, make sale of the same, but the said land remained from the time of the death of said Davis, continuously until the present time, in the adverse peaceable possession of this defendant and those under whom he claims, holding and claiming the same adversely to the pretended right and title of the said next of kin, which is the title under which plaintiff claims in this suit, and this he is ready to verify. Wherefore he prays judgment, &c.

BALLINGER, *for Def't.*

And afterwards, to wit, on the same day and year, the court here made an order in this cause, which is in the words and figures following, to wit:

Order of Court.

REUBEN MIDDLETON
v.
WILLIAM McGREW.

On this day came the parties, by their attorneys, and the demurrer of the defendant was submitted to the court. Upon the consideration whereof, because the law seems to be for the plaintiff, it is ordered that

the said demurrer be overruled; and thereupon came a jury of good and lawful men, viz: Francis J. Parker, John J. Johnson, Alex'r H. Dunn, John E. Thornton, J. V. Chaplin, R. W. Carnes, George N. Neville, John J. Dunn, Jacob Smith, R. B. Doswell, William P. Griffiths and O. D. Johnson, who, being duly elected, tried and sworn well and truly to try the issue joined, and after having made some progress in the cause, and not having time to complete the same, this cause is continued until to-morrow, and, by consent of parties, the jury were permitted to disperse.

And afterwards, to wit, on the twenty-second day of the same month, in the same year, the court here made an order in this cause, which is in the words and figures following—that is to say:

Order of Court.

REUBEN MIDDLETON }
v. }
WILLIAM MCGREW. }

Some further progress having been made in this cause, by consent of parties the jury were permitted to disperse, and this cause continued until to-morrow.

And afterwards, to wit, on the twenty-third day of January of the same year, the court here made an order in this cause, which is in the words and figures following, to wit:

Order of Court.

REUBEN MIDDLETON }
v. }
WILLIAM MCGREW. }

Further progress having been made in this cause, by consent of parties the jury were permitted to disperse, and the cause continued until to-morrow.

And afterwards, to wit, on the twenty-fourth day of January of the same year, the court here made an order in this cause, which is in the words and figures following—that is to say:

Order of Court.

REUBEN MIDDLETON }
v. }
WILLIAM MCGREW. }

Further progress having been made in this cause, by consent of parties the jury were permitted to disperse, and this cause continued until Monday next.

And afterwards, to wit, on the twenty-sixth day of January of the same year, the court here made an order in this cause, which is in the words and figures following—that is to say:

Order of Court.

REUBEN MIDDLETON
v.
WILLIAM McGREW.

After argument of counsel and the instructions of the court, the jury retired to consider of their verdict, and, after some time, returned into court the following verdict: "We, the jury, find for the defendant. F. J. Parker, foreman." It is therefore considered by the court that defendant go hence without day, and that plaintiff take nothing by his suit. And that defendant recover of the plaintiff dollars and cents, his costs about his suit expended; for which execution may issue.

And afterwards, to wit, on the twenty-seventh day of January of the same year, the parties, by their attorneys, filed an agreement herein, which is in the words and figures following, to wit:

Agreement.

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District Court at Galveston—January term, 1857.

REUBEN MIDDLETON
v.
WILLIAM McGREW. } 444.—Trespass, &c.

SAME
v.
JOHN D. LOGAN. } 445.—Trespass, &c.

SAME
v.
JOHN McGREW. } 446.

SAME
v.
A. S. THURMAN. } 447.

SAME
v.
CHARLES TAYLER. } 448.

SAME
v.
PELETIAH BICKFORD. } 449.

SAME
v.
A. B. HOLBROOK. } 450.

SAME
v.
V. E. CLARK et als. } 455.

SAME
v.
MOODY & STAFFORD. } 450.

The first named of the foregoing cases having been tried at the present term, a verdict and judgment has been rendered in favor of the defendant, and the plaintiff therein has prosecuted a writ of error to said judgment, returnable to the Supreme Court of the United States in December next: Now, it is agreed between the counsel for plaintiff and defendant, in the list of cases that they, and each of them, shall await the termination upon said writ of error, and if the judgment here is affirmed, then judgment to the same effect is to be rendered in all the cases. If the judgment is reversed the court shall apply to all the cases, and like principles shall be considered as settled in all these cases where they are involved.

ROB. HUGHES, *for Pl'ff.*
BALLINGER & JACK,
Attorneys for Defendants.

And afterwards, to wit, on the thirtieth day of March, of the same year, came the plaintiff, by his attorney, and filed his bill of exceptions herein, which is in the words and figures following—that is to say:

Bill of Exceptions.

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District Court at Galveston—January term, 1857.

REUBEN MIDDLETON, Plaintiff,
v.
WILLIAM MCGREW, Defendant. } 444.—Trespass to try Title.

Be it remembered, that on the trial of this case before a jury on the day of , 1857, to support the issue in his behalf, the plaintiff offered to read to the jury a transcript from the land office of the State of Texas, at Austin, of the original title of possession to Joshua Davis for eleven and one-fourth leagues of land, in translation in the words and figures following, to wit:

Transcript.

Third Seal, Two Reals.—For the terms of 1832, and 1833, and '34.

MR. COMMISSIONER: The citizen Joshua Davis, of this vicinity, a Mexican citizen by the law, and a native of Ireland, before you, in the most proper form, appears and says, that, having been admitted as a colonist in this new settlement by the empresarios thereof, James Power and James Hewetson, after conceding to me one quarter sitio, as a single man, have granted me the permission to select, within the lands designated to said colony, five sitios of the eleven which I have legally

acquired by purchase, as appears by the documents of acquisition, which herewith accompany on eleven leaves, which I pray you may be returned to me for the security of my rights, in virtue of which I hope that you may be pleased to do all that may be necessary, ordering them to be surveyed on the margins of the Guadalupe river, on the other bank near the sea, if you can grant me the same, giving me the corresponding title to them, for this is justice which I ask. I swear, and so forth. Refugio, 8th August, 1834.

JOSHUA DAVIS.

REFUGIO, *8th August*, 1834.

This will pass to the empresarios of this colony, that they may give their consent in the adjudication of the sitios solicited by the petition. This I decree and order, and sign, with these of my assistants. I certify.

JOSE JESUS DE VIDAURRI.

Assisting: JAMES DOLEM,
Assisting: SANTIAGO LERNA.

REFUGIO, *August 9th*, 1834.

In compliance with your foregoing request for myself and my partner, I have permitted the citizen Josue Davis to take five sitios of those cited within the lands designated for this colony, which you may concede to him in the indicated place, if there is no other legal impediment.

JAMES POWER.
JAMES HEWETSON.

In the said village I, the said commissioner, in view of the consent given by the empresarios of this colony relative to the citizen Josue Davis, permitting him to relect five sitios of land of the eleven conceded to him by the supreme government in sale to the citizen Licentiate Juan Vicente Camp, of these secured by the same title, according to the documents aforesaid, I certify having seen them, and have returned to secure his rights; attending to all of the foregoing dispositions, I served to him the aforesaid five sitios in form in addition to the one quarter sitio as a single man, and settler of this colony, which belongs to him. The said lands have been surveyed by one of the surveyors, which are situated on the San Antonio river, fronting on the same, each sitio bearing to the north 1,666⅔ varas; the first bounded on the east by vacant lands running back on this bearing 14,060 varas; on the south for an equal distance on the front by vacant lands; and on the west contiguous to the remaining lands; the said lands are conformable to the foregoing front and bearings in said river above said described tract, and particularly described in the annexed map, terminating all the S. ¼ sitios aforesaid on the east, and bounded by this bearing with the sitio surveyed for the widow of the deceased Hernandez, Mrs. Josefa Galan. In view thereof, and in use of my faculties, and in the name of the

supreme powers of the Mexican nation, and of the State, I put him in possession of them quietly, pacifically, and without any opposition, performing all the acts of true possession, giving him to understand that within one year he must construct permanent and fixed lines, and that he must effectually comply with all the requirements of the law of colonization of the 24th of March, 1825. With the said understanding I sign with two witnesses of my assistance. I certify:

JOSE JESUS DE VIDAURRI.

Asst'g: JOHN DUNN,
Asst'g: MARTIN POWER.

NOTE.—This petition was on this date attached to the book of Records, 1st vol., which I have sealed per its continuance.

GENERAL LAND OFFICE,
State of Texas.

I, E. Sterling C. Robertson, translator and recorder of Spanish deeds in the general land office of said State, bonded and sworn, certify the foregoing to be a correct translation of the original document, on file in this office. Given under my hand, at the city of Austin, on the 29th day of November, A. D. 1848.

E. STERLING C. ROBERTSON.
T. and R. Sp. D., G. L. O.

GENERAL LAND OFFICE,
State of Texas.

I, George W. Smith, commissioner of the general land office of said State, certify that E. Sterling C. Robertson, whose name is signed above, is the translator and recorder of Spanish deeds in this office.

In testimony whereof, I have hereunto set my hand, and caused the [L. S.] seal of said office to be affixed, at the city of Austin, on the 29th day of November, A. D. 1848.

GEO. W. SMYTH,
Commissioner.

To the reading of which the defendant objected, first:

1. Because the "despatch" of said title of possession does not contain the concession made by the executive of the State of Coahuila and Texas, in sale mentioned in said despatch.

2. The said title of possession purports to be issued by the commissioner of Power and Hewetson's colony, and nothing is shown authorizing said commissioner to issue the same, and he had no authority, by virtue of his office as such commissioner, to issue the same.

3. Because the said title of possession contains no evidence of the approbation or consent of the national executive to the issuance of the said title of possession, and the same being within the littoral leagues of the coast of the Gulf of Mexico; which objection was overruled, and the said title of possession was read in evidence to the jury. The said plaintiff

then offered to read to the jury the deposition of Henry J. Davis, taken in behalf of the plaintiff, in conformity with the thirtieth article of the judicial act of Congress, of 1789, on the 2d day of January, 1855. before a mayor of Brownsville, in the State of Missouri, in the words and figures following, to wit:

Deposition of Henry J. Davis.

STATE OF MISSOURI,
County of Cooper, City of Brownsville, sct.

Be it remembered, that on this second day of January, A. D. 1855, at the request of Washington Adams, attorney for plaintiff, I, H. B. Benedict, mayor of the city of Brownsville, in the county of Cooper, and State of Missouri aforesaid, called and caused Henry J. Davis to be and personally appear before me at the law office of Washington Adams, in the city and county aforesaid, to testify and the truth to say in behalf of the plaintiff in a certain matter of controversy or action at law, now depending and undetermined in the district court of the United States for the district of Texas, at Galveston, wherein Reuben Middleton is plaintiff, and William McGrew is defendant; there being present Washington Adams, attorney for the said plaintiff. The said Henry J. Davis being about the age of sixty years, and being by me first examined and cautioned, and sworn to testify the whole truth, deposed and said as follows, to wit:

I, the deponent, Henry J. Davis, am an Irishman, born in Ireland, and am now about sixty years of age; I am the son of James Davis, deceased, and brother of Joshua Davis, Joseph L. Davis and Daniel G. Davis; we were all born in Ireland; our father and the said brothers emigrated to America on or about the year A. D. 1806; our father became a citizen of the United States, and we, being minors, became citizens of the United States through him; our father went back to Ireland, and died in the year A. D. 1826; myself, and Joseph L. Davis and Daniel G. Davis emigrated to Missouri; Joseph L. Davis and myself settled in Cooper county, State of Missouri, where I still reside, and where my brother died some years since; my brother, Daniel G. Davis, settled on the north side of the Missouri river, and now resides in Randolph county, Missouri, and before we emigrated to Missouri we had lived in other States of the Union; my brother Joshua Davis, after roaming about for some time, and trading for some time in Texas, and other States of Mexico, finally settled in Texas, where he died, as near as I can recollect, in the year A. D. 1835; I was not present at the time of his death, and can only state the time from information, but of the fact of his death I have no doubt; my brother, Joshua Davis, never was married, and left no lineal descendants, and my brothers, Joseph L. Davis and Daniel G. Davis, were, together with myself, his heirs at law; we learned that our brother, Joshua Davis, deceased, was entitled to considerable lands in Texas, and myself, and Joseph L. Davis and Daniel G. Davis, as heirs at law of the

said Joshua Davis, deceased, executed to John Wilson, esq., in the year A. D. 1840, a power of attorney, which is the same marked A, and attached to the deposition of Bennett C. Clark, given in Brownsville, in the State of Missouri, on the first day of January, A. D. 1855, in the case of Reuben Middleton, plaintiff, vs. A. B. Holbrook, defendant, pending in the district court of the United States for the district of Texas, at Galveston. The said power of attorney was executed by myself, Joseph L. Davis and Daniel G. Davis, who signed their names in my presence to the same, and delivered the same, as their act and deed, for the purposes therein named, to John Wilson, esq.; I am acquainted with the signatures of the parties; I have often seen them write; one of the signatures is my own, and the others are those of Joseph L. Davis and Daniel G. Davis; I am not interested in the event of this suit in any wise; and further this deponent saith not.

HENRY J. DAVIS.

And I, the mayor of the city of Brownsville aforesaid, do hereby certify, that the reason for taking the deposition aforesaid is, that said Henry J. Davis lives in the county of Cooper, in the State of Missouri, more than one hundred miles from Galveston, in the State of Texas, the place of trial of the action of law and matter of controversy aforesaid, and I gave no notice of the time and place of taking this deposition, to the said William McGrew, to be present at the taking of the same, and to put interrogatories if he thought fit, because neither the said McGrew, nor any attorney of his, is or was at the time at which said notice should have been given, or at the time of taking this deposition, within one hundred miles of the place of taking this deposition. And I do further certify, that I am not of counsel or attorney to either of the parties, plaintiff or defendant, or in any manner whatever interested in the event of the cause or matter of controversy aforesaid; and I do further certify, that on the day and place mentioned in the caption, I was attended by the witness aforesaid. And he having been first duly sworn, as stated in the caption, I examined the said witness, reduced his testimony to writing in the presence of said witness from his statement, who then signed the same in my presence, after being so reduced to writing; and I retain this deposition in my possession to be sealed up and directed to the court aforesaid.

In testimony whereof, I hereto subscribe my name and affix my seal of office, at the city of Brownsville aforesaid, this second day of January, A. D. 1855.

[SEAL.]

H. B. BENEDICT, *Mayor*.

To the reading of which as evidence the defendant, by his counsel, objected upon the ground that the said Davis was one of the persons under whom the plaintiff claims title; but the court overruled the objection, and said deposition was read as evidence to the jury.

The said plaintiff then offered to read to the jury, and did read with-

out objection, the letter of attorney, marked A, referred to in the deposion before set out from Henry J. Davis, Joseph L. Davis, and Daniel G. Davis, to John Wilson, on the date of the 18th day of March, 1840, in the words and figures following, to wit:

Letter of Attorney, marked A.

Know all men by these presents, that we, Harry J. Davis and Joseph L. Davis, of the county of Cooper, and Daniel G. Davis, of the county of Randolph, of the State of Missouri, one of the United States of America, heirs and legal representatives of Joshua Davis, deceased, late of Texas, and State of Coahuila, of the republic of New Mexico, for divers good reasons us hereunto moving, have this day nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, John Wilson, esq., of the city of Brownsville, and county of Cooper aforesaid, our true and lawful attorney in fact, and do hereby give our said attorney full power and authority to ask, demand, and receive from us, and in our names, all lands, moneys, goods, chattels, effects, all estate whatever, real, personal, and mixed, to which we are in anywise entitled in the republic of Texas, the State of Coahuila, in New Mexico, or any other of the States of New Mexico, as heirs or legal representatives of said Joshua Davis, deceased; and do further authorize of our said attorney, of all such lands and real estate, to take possession for us and in our names, and in our names for us to settle by suit, compromise, or otherwise, all conflicting claims thereto, and to use for us in our names, and to appropriate such part of said estate as may be necessary to preserve and secure the balance in the maintenance or defence of any law-suit therefor; we do further authorize our said attorney to settle with the administrator of said deceased, and to receive from him all of said estate he may have in his hands, as such administrator, and to receipt for the same; we do also authorize and empower our said attorney to sell by deed of conveyance or otherwise, all or any of the estate of said deceased, and to receive the money therefor, and if necessary receipt for the same, and to make, acknowledge, and deliver any deed, bond, or other instrument in writing, for us, and in our names, necessary to carry into effect any of the above powers, and to do and perform all other things necessary to be done and performed in relation to the estate of said deceased, for us and in our names, as fully and completely as if we were personally present doing and consenting to the same. Hereby ratifying and confirming all and every, each of our attorney legally done in the premises, and revoking all former powers of attorney about the same matter.

In testimony whereof, we hereunto set our hands and seals, this eighteenth day of March, in the year of Lord eighteen hundred and forty.

HENRY J. DAVIS, [SEAL.]
JOSEPH L. DAVIS, [SEAL.]
DANIEL G. DAVIS. [SEAL.]

STATE OF MISSOURI, *County of Cooper.*

This day personally appeared before me, Robert P. Clark, clerk of the circuit court within and for the county aforesaid, Henry J. Davis, Joseph L. Davis, and Daniel G. Davis, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the said instrument of writing to be their act and deed for the purposes therein expressed.

Given under my hand and seal of said court, at office, in the city of Boonville, in the county of Cooper, and State of Missouri [SEAL.] aforesaid, this eighteenth day of March, in the year one thousand eight hundred and forty.

ROBERT P. CLARK, *Clerk.*
By BENNETT CLARK, *D. C.*

STATE OF TEXAS,
County of Victoria.

Wm. Garnett, clerk of the county aforesaid, and ex officio recorder in and for said county, do hereby certify that the foregoing deed was duly filed and recorded in my office on the 27th day of December, A. D. 1848, at 11 o'clock a. m., in book the 3d, pages 760 and 761.

Given under my hand and the seal of the county court at my office in Victoria, this the 27th day of December, A. D. 1848. [SEAL.]

WM. GARNETT,
Clerk C. C. V. C.

The said plaintiff then read in evidence to the jury the deposition of Bennett C. Clark, in the words and figures following, to wit:

Deposition of Bennett C. Clark.

STATE OF MISSOURI,
County of Cooper, City of Boonville, sct.

Be it remembered, that on this first day of January, A. D. 1855, at the request of Washington Adams, attorney for plaintiff, I, H. B. Benedict, mayor of the city of Boonville, in the county of Cooper and State of Missouri aforesaid, called and caused Bennett C. Clark to be and personally appear before me at the law office of Washington Adams, in the city and county aforesaid, to testify and the truth to say on behalf of the plaintiff in a certain matter in controversy or action at law, now depending and undetermined in the district court of the United States for the district of Texas, at Galveston, wherein Reuben Middleton is plaintiff, and William McGrew is defendant; there being present Washington Adams, attorney for the said plaintiff. The said Bennett C. Clark, being about the age of thirty-five years, and being by me first examined and cautioned, and sworn to testify the whole truth, deposed and said as follows, to wit:

I, the said Bennett C. Clark, during the year eighteen hundred and forty, was deputy clerk of the circuit court of Cooper county, in the State of Missouri; I was and am acquainted with Henry J. Davis, Joseph L. Davis, since deceased, and Daniel G. Davis; they were Irishmen, at least they appeared so, and were so from reputation. I have examined the power of attorney, purporting to be executed by them to John Wilson, esq., and which is attached to my deposition as an exhibit in the case of Reuben Middleton, plaintiff, and A. B. Holbrook, defendant, in the district court of the United States for the district of Texas. That power was produced before me whilst acting as deputy clerk as aforesaid, on the eighteenth day of March, eighteen hundred and forty, and acknowledged by each of them to be their act and deed for the purposes therein mentioned, and certificate was written to that effect upon the said power of attorney, and is the same now thereon, signed "Robert P. Clark, clerk, by Bennett C. Clark, D. C." And further this deponent saith not.

BENNETT C. CLARK.

And I, the mayor of the city of Boonville aforesaid, do hereby certify that the reason for taking the deposition aforesaid is, that the said witness, Bennett C. Clark, lives in the county of Cooper, in the State of Missouri, more than one hundred miles from Galveston, in the State of Texas, the place of trial of the action at law and matter of controversy aforesaid, and I gave no notice of the time and place of taking this deposition to the said William McGrew to be present at the taking of the same, and to put interrogatories if they thought fit, because neither the said McGrew, nor any attorney of his, is or was at the time said notice should have been given, or at the time of taking this deposition, within one hundred miles of the place of taking this deposition; and I do further certify, that I am not of counsel or attorney to either of the parties, plaintiff or defendant, or in any manner whatever interested in the event of the cause or matter of controversy aforesaid; and I do further certify, that on the day and at the place mentioned in the caption, I was attended by the witness aforesaid, and he having been first duly sworn as stated in the caption, I examined the said witness, and his testimony was reduced to writing by the said witness himself, in my presence, and his said testimony, after being so reduced to writing, was signed and subscribed by the said witness then and there in my presence, and I retain this deposition in my possession to be sealed up and directed to the court aforesaid.

In testimony whereof, I hereto subscribe my name and affix my seal of office, at the city of Boonville aforesaid, this 2d day of January, A. D. 1855.

[SEAL.]

H. B. BENEDICT, *Mayor*.

The said plaintiff then read, without objection, a deed of conveyance from Joseph L. Davis, Henry J. Davis and Daniel G. Davis, by their attorney in fact, John Wilson, to Reuben Middleton, in the words and figures following, to wit:

Deed of Conveyance.

Know all men by these presents, that we, Daniel G. Davis, of the county of Randolph, and Joseph L. Davis and Henry J. Davis, of the county of Cooper, all of the State of Missouri, heirs-at-law and legal representatives of Joshua Davis, deceased, late of Coahuila and Texas, of the republic of Mexico, by John Wilson, our attorney in fact, empowered by us by deed, bearing date the eighteenth day of March, in the year eighteen hundred and forty, for and in consideration of two thousand dollars to our said attorney in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey, unto Reuben Middleton, of the county of Platte and State of Missouri, and unto his heirs and assigns forever, all our right, title and interest, in and to the following described tracts of land, to wit: Five and a quarter ($5\frac{1}{4}$) sitios, (leagues,) lying and being situated in the State of Texas and county of Refugio, commencing at or near the junction of the San Antonio and Guadalupe rivers, on the west side thereof, fronting on said rivers below ($5\frac{1}{4}$) five and a quarter miles, being the same granted to the said Joshua Davis, deceased, by the republic of Mexico, on the (9) ninth day of August, A. D. 1834, (eighteen hundred and thirty-four,) the said quarter sitio granted as aforesaid, in consideration of the said Joshua Davis having become a settler under the colonization laws of said republic; also two other sitios, (leagues,) lying and being situated in the county of Victoria and State of Texas aforesaid, fronting on the said Guadalupe on the west side thereof, granted by the said republic on the 15th (fifteenth) day of October, 1834, (eighteen hundred and thirty-four,) to one Leonardo Rodriguez and his constituent Deciderio Niva; which, together with two labores of land, is bounded in said grant last aforesaid, on the northeast by the said Guadalupe river; on the northwest by the lands of one Juan Gonzales; on the southwest by the lands of one Clemente de la Garza and Santiago Lerna, and the southeast by vacant lands. Also two other sitios, (leagues,) lying and being situate in the county of Victoria, fronting on said San Antonio river on the east side thereof, granted by the said republic of Mexico, on the 8th (eighth) day of October, A. D. 1834, (eighteen hundred and thirty-four,) to one Santiago Lerna and his legitimate brother Lasano, which, together with two labores, are bounded, as appears in the original grant thereof as aforesaid, on the north thereof by vacant lands, on the west by the rancho of the citizen Clemente de la Garza, and on the south by the said river San Antonio, and on the east by lands occupied by the Priest Valdez; also one other sitio, (league,) in the said county of Victoria, granted by the said republic of Mexico, on the 15th (fifteenth) day of October, A. D. 1834, (eighteen hundred and thirty-four,) to one Juan Gonzales, and bounded in the original grant thereof as aforesaid, on the northeast by the said river Guadalupe; on the northwest by that of the citizen Edward A. McDonough; on the southwest by vacant lands, and on the southeast by the citizen Leonardo Rodriguez;

and also one other sitio, (league,) fronting on the said San Antonio river, on the west side thereof, and described in a deed of conveyance made by the said Santiago Lerna to the said Joshua Davis, deceased, bearing date the (25th) twenty-fifth day of October, A. D. 1834, (eighteen hundred and thirty-four,) of the said last mentioned sitio, (league,) together with the five other sitios (leagues) last aforesaid, as follows: "And that on this side or margin I have obtained by donation, transferred by the citizen Florentine King in favor of the first, as appears by the documents, which I also have;" and also all other lands and property, real, personal and mixed, of which the said Joshua Davis died seized, possessed, or otherwise entitled to, either in law or equity, including as well the six sitios (leagues) remaining of the eleven in the five-league grant first aforesaid mentioned, as well as all other lands of the said deceased; for more particular description of all of said lands, reference being had to said titles: To have and to hold unto the said Reuben Middleton, and unto his heirs and assigns forever, the above premises, free from us and all others claiming under us, we bind ourselves, our heirs, &c.

In testimony whereof we hereunto set our hands and seals, (in scroll,) this 22d day of January, A. D. 1849, and we further bind ourselves for all further conveyances and assurances necessary to perfect this release.

DANIEL G. DAVIS, [SEAL.]
JOSEPH L. DAVIS, [SEAL.]
HENRY J. DAVIS. [SEAL.]
By JOHN WILSON,
Our Attorney in fact.

Witness:
J. W. ALLEN,
A. S. CUNNINGHAM,
J. N. MITCHELL.

This day personally appeared A. S. Cunningham, one of the subscribing witnesses to the above deed, and made oath that the above named John Wilson, attorney in fact for the grantors in said deed, acknowledged in his presence that he executed the same for the purposes therein expressed, and that it was his act and deed as attorney in fact.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the county court of Victoria county, this [L. S.] 6th day of February, 1849.

JAMES W. ALLEN,
Chief Justice of Victoria County.

STATE OF TEXAS,
County of Victoria.

I, G. Wm. Garnett, clerk of the county court and ex officio recorder in and for said county, do hereby certify that the foregoing deed was

filed for record on the 6th Feb'y, 1849, and recorded on the 15th July, A. D. 1850, at 3 o'clock p. m., in book the 4th of deeds, pages 208 and 209.

[L. S.] Given under my hand and the seal of the county court at my office, at Victoria, this 15th July, A. D. 1850.

G. WM. GARNETT, *Clerk*.

The plaintiff here closed his evidence.

The defendant then, to support the issue in his behalf, read in evidence, without objection, the deposition of Wm. Kuykendall, in the words and figures following, to wit:

Deposition of Wm. Kuykendall.

The United States of America, District of Texas.

STATE OF TEXAS,
County of Victoria.

Be it remembered, that on this 21st day of December, in the year of our Lord one thousand eight hundred and fifty-five, I, James Ingram, a commissioner duly appointed by the district court of the United States for the district of Texas aforesaid, under and by virtue of an act of Congress of the said United States, entitled "An act for the more convenient taking of bail and affidavits in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of the said Congress, entitled "An act in addition to the act entitled 'An act for the more convenient taking of bail and affidavits in civil causes depending in the courts of the United States,'" passed March the 1st, 1817; and the act of the said Congress, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did, at the request of William McGrew, defendant, call and cause to be and personally appear before me, at my office in the town of Victoria, in the said district and State of Texas, William Kuykendall, to testify and the truth to say on the part of the defendant in a certain case or suit, now depending and undetermined in the district court at Galveston, in the said State of Texas, wherein Reuben Middleton is plaintiff, and William McGrew defendant. And the said William Kuykendall being of sound mind and lawful age, and having been by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause or suit aforesaid, was carefully examined by me, and he did thereupon depose and testify, and say as follows, that is to say:

I know James Grant; first became acquainted with him in the year 1838, or the year 1839; he claimed some five and a quarter leagues of land on Hines's bay, at Mesquit landing; his lands joined the lands of Peter Hines; Grant's land lies on the west side of the San Antonio, running up from Hines's land above the junction of the San Antonio and Guadalupe to the Hernandez or Western league; which of the

leagues I do not know; I went from Victoria in October or November, 1846, with Grant to his house on said lands; he rented his place to me; I removed my family to his place on the 24th of November, 1845; I had charge of the whole tract; had authority to lease portions of the land, and prevent the cutting of timber; I remained in possession until March, 1851; after Grant was killed, I held the same power from F. Jones, the administrator of Grant's estate; after the sale of Grant's estate, I held the same power from the purchasers, William McGrew and A. S. Thurman, to prevent timber being cut, and protected the same under and for them till the time William McGrew took possession in the month of March, 1851; William McGrew has continued in possession from that time until this date; I moved from William McGrew's place to my present residence, about three and a half miles below, on Hines's bay; when William McGrew took possession, he moved the house some three or four hundred yards up the bayou, on the same side, and where the house then stood is now enclosed in McGrew's field; John McGrew took possession of the land he now lives on in October or November, 1851; I think A. S. Thurman took possession of his land in the year 1852; in the latter part of the year 1852, or the first part of the year 1853, A. B. Halbrook and John D. Logan took possession of their lands; as near as I can estimate the value of the improvements made by the different occupants of the said lands, I think the value of William McGrew's, at this time, is worth three thousand dollars; that of A. S. Thurman is worth two thousand five hundred dollars; that of A. B. Halbrook twelve hundred dollars, and that of John D. Logan fourteen hundred dollars.

WILLIAM KUYKENDALL.

And I, James Ingram, the commissioner aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, that the testimony of the said witness is material and necessary to the civil cause or suit in the caption of the said deposition named, and that he lives in Refugio county, State of Texas, more than one hundred miles from the place where the trial of said suit is to be had, to wit, Galveston, State of Texas. I further certify, that no notification of the time and place of taking said deposition was given to the adverse party or his attorney, they being more than one hundred miles from the place of taking the same at the time aforesaid. I further certify, that on the said day and year first above mentioned, I was attended by the said witness, William Kuykendall, and thereupon the above deposition was taken and reduced to writing by me, in the presence of the said witness and from his statements, and after carefully reading the same to the said witness, he subscribed his name thereto as above written. I have retained the said deposition in my possession for the purpose of sealing up and directing the same to the clerk of the court for which the same was taken, and to be forwarded by mail from the post office at Victoria. And I do further certify, that I am not of counsel or attorney for either

of the parties in the said deposition or caption named, nor in any way interested in the event of the said cause or suit.

Witness my hand and private seal as commissioner, at Victoria, Texas, the day and year above written.

JAMES INGRAM,
U. S. Commissioner.

The said defendant then read in evidence, without objection, the deposition of J. W. Linam, taken at the same time and in the same manner with that last mentioned, in the words and figures following, to wit:

Deposition of J. W. Linam.

THE UNITED STATES OF AMERICA,
District of Texas.

Be it remembered, that on this twentieth day of December, A. D. 1855, at Victoria, in the district aforesaid, before me, James Ingram, a commissioner of the United States to take affidavits and bail in civil causes, duly appointed by the district court of the United States for the district of Texas aforesaid, under and by virtue of the several acts of Congress therefor, and duly qualified and acting as such commissioner, personally appeared James W. Linam, a person of sound mind and lawful age, a witness for the defendant in a civil suit now depending in the district court of the United States for the district of Texas, at Galveston—Reuben Middleton is plaintiff, and William McGrew defendant—and the said witness being by me first carefully examined and cautioned, and duly sworn to testify the whole truth, did thereupon depose and say as follows:

I became acquainted with Mr. Grant, who claimed the land formerly owned by Joshua Davis, on the San Antonio and Guadalupe rivers, previous to the year eighteen hundred and forty-two. In the fall of the year 1842, I found Mr. Grant living on said lands—making improvements, building a house below the junction of the said rivers, on the west side, and near a landing called Mesquit; I believe the time was the latter part of October or the first part of November. The cause of my visit to Grant's residence was to trade him a judgment I held against Peter Hines. Mr. Grant was living in a camp at the time of my first visit; he was engaged building a house—had lumber on the ground—about three or four hundred yards below the place where William McGrew now lives, on the same bayou and on the same side. Grant's house stood where McGrew's field is now enclosed. The house now occupied by William McGrew was occupied for some time by Kuykendall, before it was removed. Grant told me at the time that he owned from four and a half to five leagues of land at that point, and his lower line joined the lands of Peter Hines. I again visited him in the month of May, 1843; on the first day of June of said year he was still improving, and wanted me to stop and help him raise said house. There were three other men at work upon the house; I

only recollect one of them—his name was George Ernest. I afterwards visited the place during the month of November, 1846, and found Mr. Kukendall in possession, who continued in possession during the year 1847. My next visit was in January, 1853, (eighteen hundred and fifty-three,) when I found William McGrew in possession, and had removed the house some three or four hundred yards up the bayou. The lands were sold after Grant's death by F. Jones, the administrator. I am acquainted with Joshua Davis, and saw him at San Patricio, in the spring of the year 1835, then on his way to Mexico. I afterwards heard that he was killed on the west side of the Rio Grande.

JAMES W. LINAM.

And I, the said commissioner, certify, that the reason for taking the said deposition of said witness, James W. Linam, is, that the same is necessary for the defendant in the said civil suit in the caption mentioned; and that the witness lives in Victoria county, more than one hundred miles from Galveston, the place of trial of said suit. I further certify, that no notification from me to the adverse party to be present at the taking of said deposition, and to put interrogatories if he should think fit, was made out and served upon said adverse party; neither the said adverse party, nor any attorney of his, being within one hundred miles of Victoria aforesaid, the place of taking said deposition. I further certify, that on the date hereof, I was attended by the said witness at Victoria aforesaid; that the said witness was first carefully examined and cautioned, and duly sworn by me to testify the whole truth; and that the said preceding depositions were reduced to writing by me from the statements of the said witness, in his presence; and after being carefully read over and approved by him, he subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up and directing the same, with the certificate of the reasons aforesaid for taking the same, with my own hand, to the court, for which the same was taken. I further certify, that I am not of counsel or attorney to either party in said civil suit, or in any way interested in the event thereof.

In testimony whereof, I have hereunto set my hand, in office at Vic-
[SEAL.] toria, this 20th day of December, A. D. 1855.

JAMES INGRAM,
U. S. Commissioner.

The said defendant then offered in evidence, and read without objection, the deposition of Thomas J. Nicholson, taken on the 20th day of December, 1855, in conformity to the 30th section of the act of Congress, in the words and figures following, to wit:

Deposition of Thomas J. Nicholson.

THE UNITED STATES OF AMERICA,
District of Texas.

Be it remembered, that on this twentieth (20) day of December, in the year of our Lord one thousand eight hundred and fifty-five, at Green Lake, in the county of Calhoun, in the district aforesaid, before

me, Jefferson Beaumont, the chief justice of the county of Calhoun, personally appeared Thomas J. Nicholson, a resident of Calhoun county, a person of sound mind and lawful age, a witness for the defendants in a civil suit now depending in the district court of the United States for the district of Texas at Galveston, wherein Reuben Middleton is plaintiff, and William McGrew is defendant; and the said witness being by me first carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, did testify and say as follows:

That he was acquainted with James Grant, and that I know that he is now dead; he owned five and a half leagues of land on the west bank of the Guadalupe river, in Refugio county, Texas, known as Grant's tract, or Mesquit landing; it was five miles below the junction of the San Antonio and Guadalupe rivers; William McGrew, John McGrew, A. S. Thurman, John D. Logan, and others, now reside on said land; James Grant, in his lifetime, lived on said land, built a good dwelling and out-houses on said tract, enclosed about five acres of land; he occupied it from about the first of April, 1853, to October of the same year; said Grant took possession of the land in 1839 or 1840, and held possession until his death, in 1846.

THOMAS J. NICHOLSON.

And I, the aforesaid J. Beaumont, chief justice as aforesaid, do certify, that the reasons for taking the said deposition of the said witness, Thomas J. Nicholson, is, that the same is necessary for the defendants in the said civil suit in the caption mentioned; and that the said witness lives in Calhoun county, more than one hundred miles from Galveston, the place of trial of said suit. I further certify, that no notification from me to the adverse party to be present at the taking of the said deposition, and to put interrogatories if he should think fit, was made out and served on said adverse party; neither the said adverse party, nor any attorney of his, being within one hundred miles of Calhoun county aforesaid, the place of taking said depositions. I further certify, that on the date hereof I was attended by the said witness at Green Lake, in Calhoun county aforesaid; the said witness was first cautioned and carefully examined, and duly sworn to testify the whole truth; and that the said preceding deposition was reduced to writing by me from the statements of the said witness, in his presence, and afterwards carefully read over to him, and approved by him, and he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking the same, with my own hand, to the court, for which the same was taken. I further certify, that I am not of counsel or attorney to either party in said civil suit, or in any way interested in the event thereof.

In testimony whereof, I have hereunto set my hand and the seal of the county court of Calhoun county this twentieth day of December, 1855.

[SEAL.]

J. BEAUMONT, *Chief Justice*.

The defendants then offered in evidence, without objection, the deposition of Daniel B. Friar, taken on the first day of January, 1856, in conformity to the act of Congress, in the words and figures following, to wit:

Deposition of Daniel B. Friar.

THE UNITED STATES OF AMERICA,
District of Texas.

Be it remembered, that on this the 1st day of January, 1856, at Yorktown, in the county of Dewitt, in the district aforesaid, before me, Robert Kleberg, chief justice of Dewitt county aforesaid, duly qualified and acting as such chief justice, personally appeared Daniel B. Friar, a person of sound mind and lawful age, a witness in a civil suit now depending and undetermined in the district court of the United States for the district of Texas, at Galveston, wherein Reuben Middleton is plaintiff, and William McGrew is defendant. And the said witness having been first by me carefully examined and cautioned, and duly sworn to testify the whole truth, did thereupon depose and say as follows:

I was acquainted with Joshua Davis, a colonist of Power and Hewetson's colony, Texas. I know that the said Joshua Davis was the same who purchased an eleven-league claim, and located a part of it on Hines's bay, and who purchased other head-rights in Power and Hewetson's colony. I know these facts from the assertions of the said Joshua Davis. I became acquainted with said Davis in Mexico in the month of May, A. D. 1835. I believe the said Davis is dead; that he died in June, 1835, in the State of Coahuila. The reasons for said belief are, that I and others with me started in company with said Davis (who was an old merchant in Mexico) from Montclova to Texas. Soon after leaving Montclova we learned that we should be arrested thirty leagues from there, near Santa Rosa. Said Davis then separated from us, taking the Matamoras road. We were arrested at the said place, as expected. On arriving at Presidio I saw said Davis's head servant ride up with said Davis's horse saddle and a pair of holster pistols, said pistols being silver-mounted, with Davis's name engraved on each, being all well known to me. I was then informed by the commandante of Presidio, Captain Buragan, that Davis had been murdered. This was the fourth or fifth day after Davis had left our company. Shortly after this I heard that Davis's estate was administered upon in Montclova, soon after his death, in June, 1835. When I last saw Davis he was on his way to Texas. Since the summer of 1835 he has been generally reputed in Texas to have died at that time. I have lived in Texas since that time.

DAN. B. FRIAR.

And I, the said Robert Vileberg, chief justice of Dewitt county, Texas, do certify that the reason for taking the said deposition of the

said witness, Daniel B. Friar, is that the same is necessary for the defendant in the said civil suit in the caption mentioned, and that the said witness lives in Dewitt county, State of Texas, more than one hundred miles from Galveston, the place of trial of said suit. I further certify that no notification from me to the adverse party to be present at the taking of said deposition, and to put interrogatories if he should think fit, was made out and served on said adverse party; neither the said adverse party nor any attorney of his being within one hundred miles of Dewitt county aforesaid, the place of taking the said deposition. I further certify that on the date hereof I was attended by the said witness at Dewitt county aforesaid; that the said witness was first carefully examined and cautioned and duly sworn by me to testify the whole truth, and that the said preceding deposition was reduced to writing by me from the statements of the said witness in his presence, and after having been carefully read over and approved by him, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking the same, with my own hand, to the court for which the same was taken. I further certify that I am not of counsel or attorney to either party in said civil suit, or in any way interested in the event thereof. In testimony whereof I have hereunto set my hand this first day of January, A. D. 1856.

ROBERT VILEBERG,
Chief Justice of Dewitt county, in the State of Texas.

Transcript from Victoria [A.]

Fielding Jones on the estate of James Grant, deceased.

THE STATE OF TEXAS,
County of Victoria.

The State of Texas to Fielding Jones, and to all persons to whom these presents shall come, greeting:

Know ye, that whereas James Grant, of the county of Victoria, died intestate, on or about the last Dec'r, 1846, having at the time of his death real and personal property in said State; to the end, therefore, that said property may be duly administered according to law, the probate court of said county has thought proper to nominate, constitute, and appoint Fielding Jones adm'r of all and singular the estate, real and personal, of the said James Grant, deceased, as is required by law, and you are hereby required to make due return of your proceedings in the premises according to law.

Given under my hand and the seal of the probate court, at the office of said court, in Victoria, this 31st day of March, 1847.
[SEAL.]
G. W. GARNETT, *Cl'k.*

Fielding Jones on the estate of James Grant, deceased.

Fielding Jones, administrator of the estate of James Grant, deceased,

came into court and presented his annual exhibit of the condition of his administration of said estate, and the same having been carefully examined, is hereby approved and ordered to record.

And the said administrator having satisfied the court that a sale of real estate is necessary for the payment of debts, it is hereby ordered and decreed that all the lands set forth in the inventory of the estate be sold, except the league of land upon which the said Grant lived, and the tract on the Colorado river. The said land to be sold in Victoria county, or in the counties in which they respectively lie, at the option of the administrator; said sales to be at public auction, on a credit of twelve months, after the notice according to law. The administrator shall take care that the purchaser shall execute notes with personal security, and also execute a lien on the property sold, for the due payment of the purchase-money; and it appearing to the satisfaction of the court that the estate is not in a condition to be closed, the administrator is hereby allowed further time to close the same.

Petition and Exhibit.

THE STATE OF TEXAS,
County of Victoria.

In the Probate Court, December term, 1848.—To the Hon. J. W. Allen, the Judge of Probate in and for the county.

Your petitioner, F. Jones, adm'r of James Grant, dec'd, would most respectfully represent unto your honor that letters of administration were granted him upon the estate of James Grant, deceased, at the March term of your honorable court, 1847, and that an order was made at the May term for the sale of a portion of the estate which was due, sold to the amount of $126 60, and amount of has been rendered to your honorable court; and afterwards, at the May term, 1848, *term* of your honorable court, on petition filed by your petitioner, an order was made for the sale of the remainder of the perishable property, which sold for the sum of 7,652½ dollars, an account of which has been rendered to the court. The fees of court, and other expenses appertaining to the administration, amounting to the sum of , has been paid. The vouchers are here filed, marked A, B, C, leaving in your petitioner's hands the sum of $173 12½. Now your petitioner will state that a claim of one J. W. McFarland was presented to your petitioner, on the 11th day of December, 1847, for the sum of $44 00, and was rejected; also a claim of L. J. Latham, for the sum of $1,006 28, with vouchers, presented on this 28th day of August, and allowed. Your petitioner would further state that one other claim, in favor of Richard Fitzpatrick, has been presented, and not either allowed or rejected, because of certain information which he hopes to procure very soon, which may make certain the propriety of the claim. Your petitioner will state that there are now pending in the district court of Victoria two suits, one involving the title of a valuable league of land; the other one for a sum of money of the value of $443 00. The

McFarland claim. The estate on the inventory shows consists, except the perishable property, which has been sold, entirely in land, and with the exception of the one-half league on the Colorado river, in the county of Matagorda, the title is, or will be, as your petitioner is informed and believes, litigated. Your petitioner will further state, that more than a year ago he wrote to the birth-place of deceased, in Scotland, informing them of the death of their relation, and requesting to be advised, and that they should come forward and claim the estate. Your orator has heard nothing in reply, nor does he know of any relation living. Your petitioner therefore suggests that it would be the interest of the estate to sell the lands, or such of them as the court think proper, leaving it to the discretion of the court to determine. Your petitioner would ask the court to direct a sale for cash, for the purposes of paying for the necessary re-surveying the lands, for reasonable fees of attorney, and also for costs of court, and your petitioner, as in duty bound, will ever pray, &c.

F. JONES,
Administrator of the estate of James Grant.

Sworn to before me this 28th Dec'r, 1848.

J. W. ALLEN,
Chief Justice.

Filed 28th Dec., 1848.

G. WM. GARNETT, *Cl'k.*

Estate of James Grant.—(March term, 1849.)

F. Jones, administrator of the estate of James Grant, deceased, having in vacation, within the time prescribed by law, filed his return of sales duly authenticated, made under an order of this court at the January term thereof, for the year 1849, and the same being examined, and the truth thereof being inquired into, and it being ascertained at such examination and inquiry that the said sales were conducted in all things according to law, it is ordered, adjudged, and decreed, that the said sales be, and the same are hereby, confirmed; the return thereof is hereby ordered to record, and the administrator required to execute conveyances to the several purchasers in accordance therewith. It is further ordered that the map or plat this day filed by the administrator be made a part of said report of sales, as more fully describing the portion of each purchaser, and the same is hereby ordered to record.

Account of Sales.

To the Hon. the judge of the Probate Court of Victoria county.

Agreeable to an order of the term of your hon. court, after due notice according to law, I sold at public auction at the court-house door in the town of Victoria, on a credit of twelve months, the following lands to the persons whose names appear below, at the prices set opposite each respectively, to wit:

Quarter No. 2, commencing in the upper league laid down on the

maps of said land, on the west side of Guadalupe river, in the county of Victoria, sold to J. A. Moody, 10 c. per acre.

Quarter No. 3, sold to J. A. Moody, 8 c. per acre.

Do " 4, of same league, to Adam Stafford, 6 c. per acre.

No. 1, in the adjoining league below, to John B. Gray, F. B. Webb substituted of order of court, November term, 1849, 9 c. per acre.

Quarter No. 2, F. W. Webb, substituted by order of court, November term, 1849, 9 c. per acre.

Nos. 3 and 4, to J. A. Moody. 6 c. each.

No. 1, in the next league below, to J. A. Moody, 2 cents per acre.

Quarter No. 2, to J. A. Moody, 2.

Also No. 3, 4 cents per acre.

No. 4, to Thomas Swain, 5 cents per acre.

The above lands are situated in the county of Victoria, and belonged to the estate of James Grant, deceased, and was sold on the first Tuesday in March, 1849. The following lands are situated on the west side of the San Antonio river, in the county of Refugio:

First quarter of a league laid down on the map, commencing at the upper edge of the tract, sold to H. W. H., 6 cents per acre.

First quarter of the league adjoining below to P. Bickford, 4 cents per acre.

No. 2, to P. Bickford, 5 cents per acre.

Nos. 3 and 4, to P. Bickford, 2 cts. per acre each.

Now comes one league which was reserved by the administrator.

No. 1, in the next league lower down, V. E. Howard, 4 cts. per acre.

No. 2, Wm. McGrew, 2 cts. per acre.

No. 3, do 3.

No. 4, John B. Gray, 3.

No. 1, of the lower league, P. Bickford, at 2 cents per acre.

Nos. 3 and 4, A. S. Thurman, 2 cents each.

No. 2, of the lower league, P. Bickford, at 2 cents per acre.

The above property belonged to the estate of James Grant, deceased, and was sold on the first Tuesday in March, 1849, by me, F. Jones, administrator of James Grant.

Sworn to before me, this 24th day of March, 1846.

J. W. ALLEN, *Chief Justice*.

Filed 24th March, 1849.

G. WM. GARNETT, *Cl'k*.

Petition for Sale of Lands.

In Probate Court.—To the Hon. J. W. Allen, Judge of Probate, in and for the county aforesaid.

STATE OF TEXAS,
County of Victoria.

Your petitioner, Fielding Jones, administrator of the estate of James Grant, deceased, would most respectfully represent, that since the sale

of the lands made the first Tuesday in March, 1849, there have been presented and allowed other claims against the estate of said Grant, to wit, to John Hand, for $325, and that there are still in suit claims to the amount of about eight hundred dollars, a part of which may be named; also a claim of A. S. Cunningham, for fees as attorney, so that the proceeds of this property sold will not be sufficient to pay the debts. Your petitioner therefore prays that your honor will make an order for the sale of one league on the west bank of the San Antonio river, being the league on which Grant resided; also one half league on the east bank of the Colorado river, as the Beaty league, or so much as will be sufficient to discharge the claims as aforesaid; and your petitioner, &c.

F. JONES,
Adm'r of James Grant, dec'd.

Filed 29th May, 1849.

G. WM. GARNETT, *Cl'k.*

Order May term, 1849.

This case came on to be heard on an application for sale of real estate, and the court being fully satisfied that a sale is necessary for the payment of debts, it is hereby ordered, adjudged and decreed, that the remaining league of land on the west side of San Antonio river, it being the league on which Grant in his lifetime resided, and the half league on the east bank of the Colorado river, known as the Braty league, or so much of the same as may be necessary for the payment of the debts, be sold to the highest bidder at public auction, on a credit of twelve months. The league on the San Antonio river to be sold in Victoria county; the half league on the Colorado river to be sold in the county where it lies. It is further ordered, that this case be continued for return of sales.

Estate of Grant.

This case is ordered to be continued for return of sales until the next term of court.

Report of Sale.—Estate of Grant.

To the Hon. James W. Allen, judge of the Probate Court for the county of Victoria.

Agreeable to an order made at the May term of your hon. court, for the year 1849, after due notice having been given according to law, I sold at public auction at the court-house door, in the town of Victoria, on a credit of twelve months, one league of land on the west side of San Antonio river, on which Grant resided, which said league of land was struck off to A. S. Thurmond, at twenty-five cents per acre, it being the highest and best bid offered. The above property belonged

to the estate of James Grant, deceased, and was sold on the first Tuesday in August, A. D. 1849.

F. JONES,
Administrator of James Grant.

Sworn to before me, this 2d September, 1849.

J. W. ALLEN,
Chief Justice.

Filed the 1st Sept., 1849.

G. WM. GARNETT,
Clerk.

Order November term, 1849.—Estate of Grant.

This succession came up for consideration on a return of sales made under an order of this court at its May term, 1849, of a league of land situated on the west side of the San Antonio river, it being the same on which said Grant resided in his lifetime; and the said return being examined, and the validity of the sale being inquired into, and ascertained to have been conducted according to law, it is hereby ordered, adjudged and decreed, that the said sale be, and the same is hereby confirmed, the return thereof ordered to record, and the administrator required to make a conveyance in accordance therewith, making this order of confirmation a part hereof.

Administrator's Sale.

By virtue of a decree of the honorable county court of Victoria county, I will offer for sale at public auction at the court-house door, in the city and county of Matagorda, on the first Tuesday in the month of November, in the year A. D. one thousand eight hundred and forty-nine, between the hours prescribed by law, the following named property in Matagorda county: The lower half of the league of land number eight, on the east side of the Colorado river, original grantee Jacob Betts, and by said Jacob Betts conveyed to James Grant, as will more fully appear by reference to book F, page 325, of records of deeds, &c., for Matagorda county; terms of sale, twelve months' credit, with good and approved security, and lien on the property for the purchase money.

FIELDING JONES,
Administrator of James Grant, dec'd.
JAMES DENISON,
Agent.

Sold to Charles A. Bullard, for 21 cents per acre. Matagorda, November 6th, 1849.

JAMES DENISON,
Agent.

Filed 26th November, 1849.

G. WM. GARNETT, *Cl'k.*

Account of Sales.

STATE OF TEXAS, *County of Victoria.*

In the Probate Court.

In pursuance of an order of sale made at the May term, 1849, I proceeded to sell, on the first Tuesday in March, the half league of land lying on the east side of Colorado river known as the Betty league, and Charles A. Bullard was the highest and best bidder, at the price of 21 c. per acre, of all which I herewith make return.

F. JONES,
Administrator of James Grant.

Sworn to before me this 27th November, 1849.

J. W. ALLEN, *Chief Justice.*

Filed 26th November, 1849.

G. WM. GARNETT, *Cl'k.*

Petition.

STATE OF TEXAS, *County of Victoria.*

F. Jones, administrator of James Grant, represents, that at a sale made of the lands of the estate on the first Tuesday in March, 1849, John B. Gray bid off certain lands, and by agreement with F. B. Webb, he, Webb, executed his note, with security, in compliance with the law, instead of Gray, and for the same amount as bid by the said Gray, and by said agreement substituted himself for the said Gray, but by some misapprehension the name of Gray was retained in the list of purchasers returned. Your petitioner therefore asks that inasmuch as the said Webb has in all things complied with the law, and executed the necessary securities to the estate, that he, Webb, may have his name inserted in the original list of purchasers, and that the title may be confirmed to him.

F. JONES.

Filed 26th November, 1849.

G. WM. GARNETT, *Cl'k.*

November term, 1849.

Estate of Grant.

This succession again came on to be considered on the petition of the administrator this day filed, praying, for reasons set forth in the petition, that the sale of the upper half of the league marked B on the map of sales confirmed at the March term, 1849, to J. B. Gray, be cancelled, and the name of F. B. Webb be substituted as the purchaser; and the court being satisfied that the name of Gray was wrongfully retained in the return of sales, and that the name of F. B. Webb should have been returned as the true purchaser, and it appearing that the administrator has made a conveyance of said half league to said

Webb, it is hereby ordered that the name of said Webb be substituted for the name of said Gray in the return of sales, and that the deed of conveyance made to said Webb be, and the same is hereby, confirmed.

In this probate court, in vacation, May, 1850, the adm'r presents this his final acc't for allowance:

Am't came to administrator	$2,948 26
Amount paid out	2,789 33
	158 93
Judge's fees (voucher P)	21 47
Clerk's fees (voucher Q)	23 00
	108 19

These are the costs of court upon final action of the accep'e, which is not ascertained.

F. JONES.

Adm'r charges himself with the amount of sales of personal property, as per sale-bill filed	$198 62
As per real estate	2,749 64
	2,948 26

Adm'r claims allowance for the following amounts:

Am't paid J. J. Latham, A	$1,356 60
R. M. Hanna, B	253 72
A. S. Cunningham, C	100 00
F. M. Patrick, D	210 00
McFarland, E	208 00
P'd for txs. y'r '46 and 47, F	120 15
Logan & Sterne, G	24 25
Adm'r com'r, H	295 00
Adm'r's claim, J	100 00
Allen & Delano, K	25 00
Costs of court, L	32 17
P'd Prudhom for selling persnl. estate, M	14 00
P'd appraisers, N	6 00
Thurmond for auctioneering l'e, O	44 44
	2,789 33

Sworn to before me this 9th May, 1850.

J. W. ALLEN, *Ch. Justice*.

Fielding Jones, administrator of the estate of James Grant, deceased, having filed his account for final settlement, it is ordered, adjudged and decreed, that due notice be given, by publication in the "Texas Advocate," of the filing of the said account for final settlement of the estate of James Grant, deceased, and that the same shall be acted on at the next term of this court, to be holden on the last Monday of May next, 1850.

Done in vacation, this 9th day of May, 1850.

J. W. ALLEN,
Chief Justice of Victoria county.

Filed 9th May, 1850. G. WM. GARNETT, *Cl'k.*

THE STATE OF TEXAS,
County of Victoria.

County Court pertaining to the Estate of Deceased Persons.

Fielding Jones, administrator of the estate of James Grant, deceased, having filed his account for final settlement of the estate of James Grant, deceased, and that the same will be acted on at the next term of the county court, to be holden on the last Monday of May, 1850.

[SEAL.] Given under my hand and the seal of the county court, at office in Victoria, this 9th day of May, 1850.

G. WM. GARNETT, *Cl'k.*

May term, 1850.—Estate of James Grant.

This succession came up to be considered by the court for approval of the final account, and proof of publication being made, and the said final account being fully examined, together with the vouchers sustaining the same, it is ordered, adjudged and decreed, that the said final account be, and the same is hereby, approved and ordered to record, and the vouchers accompanying the same ordered to be filed; and, for reasons satisfactory to the court, this case is continued until the next term of this court.

June term, 1850.—Estate of Grant.

For reasons satisfactory to the court, this case is continued until the next term of this court.

July term, 1850.—Estate of Grant.

Whereas a clerical error was committed in the final account of the administrator, approved at the May term, 1850, in representing the claim of McFarland at $208 00, instead of $246 10, as appears by the transcript of the record filed in this court, 22d November, 1849, which is here referred to as a voucher; it is therefore ordered, adjudged and decreed by the court, that the said account be, and the same is hereby, so corrected as to show the item of McFarland's claim to be $246 10, instead of $208 00; and the balance due the estate of the administrator ($70 09) seventy dollars 09 cents, instead of ($108 19 cents) one hundred and eight dollars 19 cts., as there set forth.

July term, 1850.—Estate of Grant.

A claim on the above estate in favor of William M. Sargeant, for seventy-nine dollars, having been presented too late for a pro rata share of the estate, and the same being deemed legal and valid by the court, it is ordered that the administrator do hereby pay said claim, so far as the assets remaining in his hands will go.

December term, 1850.—Estate of Grant.

F. Jones, administrator of James Grant, dec'd, having filed in this court his final account, and the same having been examined and approved, and it appearing to the court that there remains in the hands of the said Jones, adm'r, nothing for distribution, the entire assets of said estate having been exhausted in the payment of debts, it is ordered, adjudged and decreed, that the said final account be approved, and the said Jones and his sureties discharged from all further liability on account of said estate.

THE STATE OF TEXAS,
County of Victoria.

I, the undersigned, clerk of the county court in and for the county aforesaid, do hereby certify that the foregoing pages, Nos. from one to twelve, unto which this certificate is annexed, is a true and correct transcript from the records of said county court, pertaining to estates of dec'd persons, so far as they extend in the case, wherein Fielding Jones is the administrator of the estate of James Grant, deceased, as appears of record, in vol. the 2d, pages 638 and 639, and vol. 2, pages 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, on file in my office.

In testimony whereof I hereunto set my hand and affix the impress of my official seal of office, at Victoria, this the eleventh day of April, A. D. 1856.

G. WM. GARNETT,
Clerk C. C., V. C.

The defendant then offered in evidence and read without objection a deed of conveyance from Fielding Jones, adm'r, &c., to Alfred S. Thurman, dated the 28th day of November, 1849, with the certificates thereon endorsed, in the words and figures following, to wit:

Conveyance to A. S. Thurman.

STATE OF TEXAS, *County of Victoria.*

Know all men by these presents, that whereas the hon. county court of Victoria county, for the management of estates, made at their November term the following order, to wit: "The estate of James Grant, deceased. This succession came in for consideration on a return of sales made under an order of this court at its May term, 1849, of a league of land on the west side of the San Antonio river, being the same upon which Grant in his lifetime lived; and the said returns having been ex-

amined and found regular, and the regularity of the sale inquired into and ascertained, to have been in all things conducted according to law, it is ordered, adjudged, and decreed, that sale be, and the same is hereby, confirmed, the return thereof ordered to record, and the administrator is ordered to execute a conveyance to the purchaser, making the order of confirmation a part thereof.

Now, therefore, I, Fielding Jones, as administrator of the estate of James Grant, deceased, do hereby, in obedience to the aforesaid order, sell, convey, and confirm to Alfred S. Thurmond, the said league of land, on the west side of the San Antonio river, in the county of Refugio, being the league upon which Grant in his lifetime lived, and now occupied by William Kuykendall, for and in consideration of the sum of eleven hundred dollars to me secured to be paid:

To have and to hold the above described tract of land to the said Thurmond, his heirs and assigns forever, in fee simple, and as the administrator, I do covenant to warrant and defend the title to the aforesaid tract of land against all claims, only so far as by law an administrator is bound to do.

In testimony whereof, I have hereto set my hand and scroll by way of seal, this 28th of November, 1849.

FIELDING JONES, [SEAL.]
Administrator of James Grant, deceased.

EDWARD LINN,
J. A. MOODY.

STATE OF TEXAS, *County of Victoria.*

Before me, James Ingram, a notary public, duly commissioned and sworn, in and for the county of Victoria, and State of Texas, personally appeared Fielding Jones, a party to the foregoing deed of conveyance, bearing date on the 28th day of November, A. D. 1849, and acknowledged the same to be his act and deed as the administrator of the estate of James Grant, dec'd, for the purposes therein specified.

[SEAL.] In testimony whereof, I hereunto set my hand and official seal in office, at Victoria, this 9th day of March, A. D. 1850.

JAMES INGRAM, *Notary Public.*

STATE OF TEXAS, *County of Refugio.*

I do hereby certify that the foregoing deed was this day presented to me for record, and was recorded in book E, pp. 312, 313, and 314, according to law.

JNO. W. McFARLANE,
Clerk Cy. Ct. Ref. Cy.

Endorsed: Transferred from me to William McGrew.
A. S. THURMOND.

The defendant then offered in evidence and read without objection a deed of conveyance from Alfred S. Thurmond to William McGrew,

dated the 5th day of January, 1852, with the certificates of probate and record, in the words and figures following, to wit:

Conveyance from Thurmond to McGrew.

STATE OF TEXAS, *County of Victoria.*

Know all men by these presents, that I, A. S. Thurmond, of the county and State aforesaid, have this day, for and in consideration of two thousand dollars in hand paid by William McGrew, of the county of Refugio and State aforesaid, the receipt whereof is hereby acknowledged, have this day bargained, sold, and do, by these presents, bargain, sell, alien, and convey, all the right, title, and interest that I have or ever had in and to the following league of land, to wit:

Said league of land situated and lying on the west bank of the San Antonio river, in the county of Refugio and State of Texas, and known as the Mesquit Landing league, upon which James Grant occupied, lived, cultivated, and lived in his lifetime, and after the death of said Grant the same was sold by F. Jones, administrator of the estate of James Grant, deceased, and purchased by me, the said A. S. Thurmond. Reference to the record of the county clerk of Refugio will clearly show the chain of titles from the said F. Jones, administrator of the estate of Grant, deceased, to me; to have and to hold the above described league of land to the said William McGrew, his heirs, administrators, executors, and assigns, forever in fee simple; and I do forever warrant and defend the title of the same against the claim or claims of any person or persons claiming through me, save that of the said William McGrew, which I make valid and recognise in law.

A. S. THURMOND. [SEAL.]

Test: WM. S. GLASS,
G. WM. GARNETT.

THE STATE OF TEXAS, *County of Victoria.*

Personally appeared before me, G. Wm. Garnett, clerk of the county court in and for said county, A. S. Thurmond, the grantor in the foregoing instrument of writing, to me well known, who acknowledged his signature to said instrument; and that he executed, signed, sealed, and delivered the same for the uses, purposes, and considerations therein specified.

In testimony whereof, I hereunto set my hand and the seal of the county court at my office in Victoria, this 26th day of January, A. D. 1852.

[SEAL.]

G. WM. GARNETT,
Clerk C. C. V. C.

THE STATE OF TEXAS,
County of Refugio.

I, John Shelby, clerk of the county court in and for the county of Refugio, and State aforesaid, do hereby certify that the foregoing deed

was filed in my office for record on the 4th day of August, 1852, and duly recorded in book D, pages 132 and 133, on the 5th day of August, A. D. 1852, at 10 o'clock a. m.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of the county court at my office in Refugio, this 5th day of August, A. D. 1852.

JOHN SHELBY,
Clerk C. C. R. C.

The defendant then offered in evidence, and read without objection, a deed of conveyance from Fielding Jones, adm'r, &c., to William McGrew, with the certificates of probate and record thereof, in the words and figures following, to wit:

Deed from Jones to McGrew.

THE STATE OF TEXAS,
County of Victoria.

Know all men by these presents, that I, Fielding Jones, administrator of the estate of James Grant, deceased, did, on the first Tuesday in March, 1849, it being the 6th day of said month, sell for the consideration of fifty-five dollars and fifty-four cents, to William McGrew, he being the highest and best bidder for the same, the following described real estate, to wit: one half of a league of land, being and lying on the west bank of the San Antonio river, in the county of Refugio, and known on the plat of the same survey, which is now filed in the clerk's office of the county court of Victoria, as being the second (2) and third (3) quarters of a league marked on said plat with the letter G. Said sale was made in obedience to an order of the probate court of Victoria county, at its January term for the year 1849, and was confirmed by an order of said court, at its May term for the same year, in the following words, to wit:

Estate of Grant.

Fielding Jones, administrator of the estate of Grant, deceased, having in vacation, within the time prescribed by law, filed his return of sales, duly authenticated, made under an order of this court, at the January term for the year 1849, and the same being examined and the truth thereof inquired into, and it being ascertained on such examination and inquiries that sales were conducted in all things according to law, it is ordered, adjudged and decreed, that the said sales be, and the same are hereby, confirmed; the return thereof is hereby ordered to record, and the administrator required to execute conveyances to the several purchasers in accordance therewith. It is further ordered that the map or plat, this day filed by the administrator, be made a part of said report of sales, as more fully describing the portion of estate purchased, and the same is hereby ordered to record.

Now I, Fielding Jones, administrator as aforesaid, do hereby convey unto the said William McGrew, his heirs, administrators, executors or

assigns, all the right, title and interest that the said James Grant, deceased, had, or pretended to have, in and to the land and premises aforesaid.

In testimony whereof, I have hereunto subscribed my name and scroll seal, this 6th day of March, A. D. one thousand eight hundred and forty-nine.

FIELDING JONES, [SEAL.]
Administrator of James Grant, dec'd.

Attest: L. F. CHAPMAN,
J. A. LEDBETTER.

STATE OF TEXAS,
County of Victoria.

Before me, James Ingram, notary public, duly commissioned and sworn, in and for the county of Victoria and State of Texas, personally appeared Fielding Jones, a party to the foregoing deed of conveyance, bearing date on the 6th day of March, A. D. 1849, and acknowledged the same to be his act and deed as administrator of the estate of James Grant, deceased, for the purposes therein specified.

[SEAL.] In testimony whereof, I hereunto set my hand and official seal in office at Victoria, this 9th day of March, A. D. 1849.

JAMES INGRAM,
Notary Public.

STATE OF TEXAS,
County of Refugio.

I do hereby certify, that the foregoing deed was this day presented to me for record, and was recorded in book C, p. 310, 311, and 312, according to law.

J. W. B. McFARLANE,
Clerk C. C't Ref. Co.

The said defendant then offered to read, as evidence to the jury, a copy of a deed of conveyance from Reuben Middleton and wife to Henry C. Middleton, 19th day of August, 1854, with the certificates of probate and record thereof, in the words and figures following, to wit:

Reuben Middleton to Henry C. Middleton.

Know all men by these presents, that we, Reuben Middleton and Mary E. Middleton, his wife, of the city of St. Joseph, county of Buchanan, State of Missouri, for and in consideration of two thousand dollars ($2,000) to us in hand paid, have this day bargained, sold, aliened, and conveyed unto our brother, Henry C. Middleton, of the county of Holmes and State of Mississippi, all our right, title, and interest in and to the following described tract or parcel of land lying and being situated in the State of Texas, to wit: five and a quarter leagues

of land, commencing about a quarter of a mile above the junction of the Guadalupe and San Antonio rivers, and running down with said rivers about five and a quarter miles, and extending back westwardly about nine miles on the west side of said rivers; also one league of land above the above described, fronting on the San Antonio river, on the west side thereof, one mile, and running back nine miles; also two leagues of land more, fronting on said San Antonio river, on the east side thereof, and running back eastwardly; and also three other leagues of land, fronting on the said Guadalupe river, on the west side thereof, and extending back eastwardly; amounting in all to eleven leagues and a quarter of a league of land, and being all the lands in Texas we purchased of the heirs of Joshua Davis, dec'd, having heretofore sold to one Volney E. Howard one-fourth of the same, and to Joshua Wilson one-fourth of the remaining balance. We further sell and convey all our other of which the said Joshua Davis died seized in law or equity in the republic of Texas, now State of Texas, that we purchased of heirs of said Joshua Davis, deceased; to have and to hold the above described tract of land unto the said Henry C. Middleton, and unto his heirs and assigns forever, free from all persons claiming under us.

In testimony whereof, we hereunto set our hands and seals this the nineteenth day of August, eighteen hundred and fifty-four.

REUBEN MIDDLETON, [SEAL.]
MARY E. MIDDLETON. [SEAL.]

STATE OF MISSOURI,
County of Buchanan.

Be it remembered, that on this twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-four, before me, Joseph J. Kyatt, judge of the probate court within and for the county of Buchanan, in the State of Missouri, which said court is a court of record, personally appeared Reuben Middleton and Mary E. Middleton, his wife, both of whom are personally known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same as party thereto, and severally acknowledged the same to be their voluntary act and deed for the uses and purposes therein contained; and she, the said Mary E. Middleton, being by me first made acquainted with the contents of said deed, and the effects thereof, on examination separate and apart from her said husband, acknowledged and declared that she executed said deed and relinquished her dower to the lands and tenements therein granted, freely, voluntarily, and without compulsion or undue influence of her said husband.

In testimony whereof, I hereunto sign my name and affix the seal of said court, at office in the city of St. Joseph, this 20th day of October, A. D. 1854. [SEAL.]

JOSEPH J. WYATT, *Judge*.

THE STATE OF TEXAS,
County of Victoria.

I, G. Wm. Garnett, clerk of the county court in and for said county, do hereby certify that the foregoing, to which this certificate is attached, is a true and correct transcript from the record of deeds, vol. (6) sixth, page 127, as the same appears on said record on file in my office.

[L. S.] Given under my hand and the seal of my office, at Victoria, this the 12th day of January, A. D. 1856.

G. WM. GARNETT, *Cl'k C. C. V. C.*

To the reading of which the plaintiff, by his counsel, objected, because the same conduced to prove or disprove no issue in this action, being executed after the commencement of the suit; but waiving objection so far as the paper offered was a copy and not the original deed. Which objection made by plaintiff the court allowed, and refused to permit said deed to be read as evidence. And this was all the evidence.

The court thereupon charged the jury, that if they found by the evidence that Joshua Davis, the grantee under whom the plaintiff claimed, departed this life in the year 1835, having no other kindred than three brothers, citizens and residents of the United States, and aliens to Mexico, such brothers, by reason of alienage, could not take real estate by descent from him in Mexico. To the opinion of the court in thus charging the jury the said plaintiff excepted, and excepts before the said jury retired from the bar, and prays that this his bill of exceptions may be signed, sealed, enrolled, and made a part of the record herein; which is done accordingly.

JOHN C. WATROUS. [SEAL.]

And afterwards, to wit, on the first day of April, of the same year, there issued from the clerk's office of our said court a writ of error to the Supreme Court of the United States, which is in the words and figures following, that is to say:

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

[L. S.] The President of the United States to the honorable the Judge of the District Court of the United States, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the said disrtict court before you, between Reuben Middleton as plaintiff, and William McGrew as defendant, a manifest error hath happened to the great damage of the said Reuben Middleton, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you that if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme

Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, and the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this first day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

JAMES LOVE,
Clerk of the District Court of the United States, Eastern district of Texas.

Allowed by—

JOHN WATROUS,
Judge of the District Court of the United States for the Eastern district of Texas.

And afterwards, to wit, on the same day and year, citation issued in the words and figures following, to wit:

Citation.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to William McGrew, [L. S.] or William P. Ballinger, attorney of record of said party, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to an appeal filed in the clerk's office of the district court of the United States for the eastern district of Texas, at Galveston, wherein Reuben Middleton is appellant, and William McGrew is appellee, to show cause, if any there be, why a judgment rendered by said court on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and fifty-seven, should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of Galveston, this 1st day of April, A. D. 1857.

JOHN C. WATROUS, *U. S. Judge.*

And on said writ is the return of the marshal of this district, which said return is in the words and figures following—that is to say:

Return.

Received on the 6th day of April, A. D. 1857, and on the seventh day of said month, April, 1857, I executed this writ or monition by

giving William P. Ballinger a true copy of the same, he being the attorney of record of the within named appellee.

BEN. McCULLOCH, *U. S. M.*
By BEN. E. BENTON, *Deputy.*

And on the same day and year came Robert Hughes, attorney for plaintiff, and filed his letter of attorney herein, which is in the words and figures following—that is to say:

Letter of Attorney.

Know all men by these presents, that I, Henry C. Middleton, a citizen of the State of Mississippi, for divers good causes and considerations me thereto moving, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint Robert Hughes, of the city of Galveston, my true and lawful attorney in fact, for me and in my name, to sign, seal, and deliver any bond or bonds, writing or writings, which may be necessary or proper to obtain or to take a writ of error in the name of Reuben Middleton, of the State of Missouri, in the suit or action lately pending in the United States district court for the district of Texas, at Galveston, in which said Reuben Middleton was plaintiff, and William McGrew defendant, and in which final judgment has been or may be rendered at the now present term of said court, so that the case may be taken to the Supreme Court of the United States, for the purpose of reversing the judgment of said district court; and I do further authorize and empower said Robert Hughes, in like manner, to execute and deliver any other bond or bonds, writing or writings, which may be necessary, so that a transcript of the record and proceedings in said suit, after the taking said writ of error, may be received by the clerk of the supreme court, and filed in said court, together with all such other bond or bonds, writing or writings, as may be necessary or required as security for costs, or otherwise, in order that all cases in the said district court now pending in the name of said Reuben Middleton against other persons may be prosecuted to judgment, and appeals or writs of error taken and prosecuted to said Supreme Court of the United States if necessary; hereby ratifying and confirming whatever my said attorney may do or cause to be done in the premises, by virtue of these presents.

In testimony whereof, I hereto set my hand and seal, this 9th day of March, A. D. 1857.

H. C. MIDDLETON. [SEAL.]

Signed, sealed, and delivered in presence of—
H. B. MARTIN,
W. M. ARMSTRONG.

STATE OF TEXAS,
County of Galveston.

Before me, James Welsh, notary public in and for the county of Galveston, personally came H. C. Middleton, to me known, who ac-

knowledged that he signed, sealed and delivered the foregoing letter of attorney, as his voluntary act and deed.

[SEAL.] Given under my hand and official seal, at the city of Galveston, this 9th day of March, A. D. 1857.

JAMES WELSH,
Notary Public, G. C.

THE STATE OF TEXAS,
Galveston County.

This day Henry C. Middleton personally appeared before me, James Welsh, a notary public in and for the county aforesaid, and being first duly sworn, states that he believes that he is worth the sum of twenty-five hundred dollars, and that he is fully able to pay, and that the amount of said twenty-five hundred dollars could be made out of him, after paying all his just debts.

H. C. MIDDLETON.

Sworn to and subscribed before me, at the city of Galveston, this 9th March, 1857.

JAMES WELSH,
Notary Pub., Gal. Co.

And on the same day and year, an appeal bond was filed herein, which is in the words and figures following, that is to say:

Bond.

THE UNITED STATES OF AMERICA,
Eastern District of Texas.

Know all men by these presents, that we, Reuben Middleton and Henry C. Middleton, and Joseph Black, as sureties, are held and firmly bound unto William McGrew in the just and full sum of two hundred and fifty dollars, to be paid to the said party, his certain executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this first day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas lately, at a term of the district court of the United States for the district of Texas, begun and holden at the city of Galveston, in and for said district, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-seven, in a suit at law depending in said court, between Reuben Middleton, plaintiff, and William McGrew, defendant, a judgment was rendered against the said plaintiff, who thereupon sued out a writ of error to the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Reuben Middleton shall prosecute his writ of error to effect, and an-